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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

Criminal Appeal No. 646 of 2001

Surjan

Vs.

State of Chhattisgarh

And other connected Criminal Appeals No. 650/2001, 715/2001, 761/2001, 786/2001, 822/201, 824/2001, 842/2001, 851/2001, 868/2001, 873/2001 & 924/2001.

JUDGMENT

Judgment for consideration

Sd/-
Sunil Kumar Sinha
Judge

I agree

Sd/-

Hon'ble Shri Justice L.C. Bhadoo, J

Post for Judgment: 11.05.2007

Sd/-
Sunil Kumar Sinha
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

Criminal Appeal No. 646 of 2001

APPELLANT Surjan, S/o Saraharam, Aged about 35 years, R/o Village- Bhaismudi, Distt.- Janjgir-Champa (C.G.)

Versus

RESPONDENT State of Chhattisgarh,
Through S.H.O., P.S. Janjgir, Distt.- Janjgir-Champa (C.G.)

Criminal Appeal No. 650 of 2001

APPELLANTS

1 Balchand son of Kanhaiya Singh, aged 70 years, R/o Village- Bhaismundi, P.S. Janjgir, Distt.- Janjgir-Champa (C.G.)

2 Devilal S/o Virsai, aged 71 years, R/o Village Bhaismundi, P.S. Janjgir.

Versus

RESPONDENT State of Chhattisgarh,
Through : P.S. Janjgir, Distt.- Janjgir-Champa (Chhattisgarh)

Criminal Appeal No. 715 of 2001

APPELLANTS

1 Janak Son of Nathuram Yadav, Aged about 30 years

2 Bhagwat Son of Ghiral Kashyap, Aged about 32 years.

Both resident and cultivator of Village Bhaismudi, P.S. Janjgir, Distt. Champa Janjgir C.G.

Versus

RESPONDENT State of Chhattisgarh,
Through Police Station Janjgir

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Criminal Appeal No. 761 of 2001

APPELLANT Kumar Singh, son of Bajrang Singh Thakur, aged about 34 years, resident of village Bhaismundi, P.S. Janjgir, Distt.- Janjgir (Chhattisgarh)

Versus

RESPONDENT State of Chhattisgarh:
Through: P.S. Janjgir, Distt.- Janjgir (Chhattisgarh)

Criminal Appeal No. 786 of 2001

APPELLANTS

1 Santosh Singh S/o Rameshwar Singh aged about 34 years, resident of Behasmudi, P.S. Janjgir, Distt. Janjgir-Champa (C.G.)

2 Nande Singh S/o Rameshwar Singh, aged about 30 years, resident of Behasmudi, P.S. Janjgir, Distt. Janjgir-Champa (C.G.)

3 Rameshwar S/o Kusal Singh, aged about 75 years, resident of Behasmudi, P.S. Janjgir, Distt. Janjgir-Champa (C.G.) **(Died during the pendency of Appeal)**.

4 Nand Kumar S/o Rameshwar Singh, aged about 25 years.

Versus

RESPONDENT State of Chhattisgarh
Through : District Magistrate, Janjgir (C.G.)

Criminal Appeal No. 822 of 2001

APPELLANT Rohit son of Harish Chand, aged about 25 years, resident of village Bhains Mudi, Police Station Janjgir, District –Janjgir-Champa, Chhattisgarh.

Versus

RESPONDENT State of Chhattisgarh through District Magistrate, Janjgir.

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Criminal Appeal No. 824 of 2001

APPELLANTS

1. NIRMAL KASHYAP, aged 42 years, son of Tirith Ram Kashyap,
2. JAIPAL KURMI, aged 36 Years, son of Baijnath Kurmi,
3. RESHAM LAL KURMI, aged 40 years, son of Luru Kurmi,

All residents of village- Bhaismudi, Police Station- Janjgir, District- Janjgir-Champa (Chhattisgarh)

Versus

RESPONDENT

STATE OF CHHATTISGARH,
through Police Station Janjgir, District – Janjgir-Champa.

Criminal Appeal No. 842 of 2001

APPELLANTS

1. Baran S/o Narayan Kurmi, Aged about 40 years,
2. Chhatram S/o Shri Ram Kashyap, Aged about 35 years.

Both are resident of Village Bhaisgudi, Police Station Janjgir, Distt. - Janjgir

Versus

RESPONDENT

STATE OF CHHATTISGARH
Through Station House Officer Police Station Janjgir

Criminal Appeal No. 851 of 2001

APPELLANT

Raj Kumar S/o Bajrang Singh aged about 48 years, resident of Village Behasmudi, P.S. Janjgir, District Janjgir-Champa

Versus

RESPONDENT

State of Chhattisgarh, through the District Magistrate, Janjgir

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Criminal Appeal No. 868 of 2001

APPELLANT Guharam S/o Bhukhan Kurmi, aged 38 years, R/o Village Bhainsmudi, P.S. Janjgir, District Janjgir-Champa (C.G.)

Versus

RESPONDENT State of Chhattisgarh,
Through Station House Officer, Janjgir, District Janjgir-Champa (Chhattisgarh)

Criminal Appeal No. 873 of 2001

APPELLANTS

1. Dhananjay S/o Baijnath, aged about 30 years
2. Amritlal S/o Konda, aged about 40 years

Both resident of Village : Bhaismudi, P.S. Janjgir, District : Janjgir-Champa (C.G.)

Versus

RESPONDENT State of Chhattisgarh,
Through Police Station Janjgir

AND

Criminal Appeal No. 924 of 2001

APPELLANT Basant Das son of Shri Lal Das, aged about 26 years, resident of village Bhaismudi, P.S. – Janjgir, District-Janjgir (C.G.)

Versus

RESPONDENT State of Chhattisgarh,
Through : P.S. Janjgir, Distt. Janjgir-Champa (C.G.)

Appearance:

Shri B.M.K. Bajpai, Advocate, appears for the appellants in Cr.A. No. 715/2001.

Shri S.L. Bajaj, Advocate, appears for the appellants in Cr.A. No. 873/2001.

Shri N.L. Soni, Advocate, appears for the appellants in Cr.A. No. 650/2001.

Shri Somnath Verma, Advocate, appears for the appellants in Cr.A. Nos. 761/2001 & 824/2001.

Shri Prafull Bharat and Shri Santosh Bharat, Advocates, appear for the appellants in Cr.A. No. 786/2001.

Ms. Sharmila Singhai, Advocate, appears for the appellants in Cr.A. Nos. 646/2001 & 842/2001.

Dr. Shailesh Ahuja, Advocate, appears for the appellant in Cr.A. No. 924/2001.

Shri Vimlesh Bajpai, Advocate, appears for the appellant in Cr.A. No. 822/2001.

Shri P.S. Chandel, Advocate, appears for the appellant in Cr.A. No. 851/2001.

Ku. Minu Banerjee, Advocate, appears for the appellant in Cr.A. No. 868/2001.

Shri G.K. Beriwal, Dy. Advocate General and Shri U.N.S. Deo, Additional Public Prosecutor, appear for the State/respondent in all the Criminal Appeals.

JUDGMENT
(11.05.2007)

As per Sunil Kumar Sinha, J.

(1) These appeals arise out of a common judgment dated 12.7.2001 passed in Sessions Trial No.340/95 by the Addl. Sessions Judge, Janjgir (C.G), therefore, they are being disposed of by this common judgment.

(2) These appellants, 21 in number, out of which one namely Rameshwar, appellant in Criminal Appeal No.786/2001, who died during the pendency of the appeal, alongwith 10 other co-accused persons were charged u/ss 148 & 302 read with section 149 of I.P.C.

(3) The allegations are that on 17.1.1995 in village Bhaismudi, they committed rioting being armed with deadly weapons and being the members of an unlawful assembly, in prosecution of the common object of that assembly, committed murder of the deceased namely Ramanuj @ Vikki Singh.

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(4) The case of the prosecution is that the accused persons had constituted *Shiv Sena* in their village and they were having some dispute with the deceased. In the intervening night of 16.1.1995 and 17.1.1995, they convened a meeting and planned for eliminating the deceased. On 17.01.1995 when the deceased was returning back from his fields at about 11-12 hours in the day, they armed with deadly weapons, surrounded the deceased and gave fatal blows to him, due to which, the deceased died on the spot. The story which comes through the evidence of P.W.14, Karia, is that he was accompanying the deceased on his bicycle. Vikki Singh was driving the bicycle and he was sitting as pillion rider. When they reached near *Navatalab* (a tank), he saw that Guha Singh was sitting there and other accused persons namely Nande, Rameshwar Singh, Lala, Raj Kumar, Kumar Singh, Baran, Chatram, Amrit all these persons were also sitting near the Tank. As soon as the bicycle reached to the tank, accused Nande, Guha, Rameshwar Singh, Lalaram, Kumar Singh, Amrit, Baran, Chatram, all these persons started assaulting the deceased Ramanuj @ Vikki Singh by *Lathis* and *Tabbal*. Seeing all these, he ran away from the place of occurrence leaving Vikki Singh all alone, and reached to the house of Madhubala @ Baby (P.W. 10) who is daughter of Jawahar Singh, and narrated the story to her. On this, Baby told him to inform the wife of Vikki Singh (her aunt). Thereafter he went to tell the story to the wife of deceased, who said him to tell the story to other persons, on which he narrated the story to the wife of Jawahar Singh. Thereafter, Madhubala @ Baby (P.W.10) narrated the story to Vinay Kumar Singh (P.W.4), son of deceased who lodged the First Information Report at about 17 hours on the same day vide Ex.P.38. The F.I.R. contains the names of 12 accused persons i.e., Kumar Singh, Nande Singh, Santosh Singh, Guharam Kashyap, Jaipal Kashyap, Raj Kumar Singh, Nand Kumar, Reshamlal, Prahlad Singh, Rameshwar Singh, Dhanjay Kashyap and Rohit Kumar Karsh. It also contains the fact that on the same day, after murder of the

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deceased, the accused persons went towards elder brother of the deceased, Jawahar Singh and his sons Bhupendra Singh and Shailendra Singh, who were working in their respective fields and they also assaulted them, due to which Jawahar Singh and Bhupendra Singh died in the field itself whereas Shailendra Singh has received grievous injuries. Later on Shailendra Singh also died. For death of these three persons, a separate crime was registered. After the second incident, the 3rd incident also took place at about 1 p.m. in which the deceased Kali Charan was murdered for which another crime was also registered and separate investigations were done in all the cases.

(5) During the course of investigation, inquest on the body of the deceased was prepared vide Ex.P.4 and it was sent for postmortem. The postmortem was conducted by P.W.13, Dr.Arvind Dwivedi, who noticed the following external injuries on the body of the deceased:

> **1.** A lacerated wound 4 cm. x 1.5 cm. x bone deep at posterior aspect of right elbow. Olecranon process was exposed and fractured, clotted blood was present.
>
> **2.** Almost **T** shaped incised wound over scalp at right parieto-temporal region and extending towards (left) parietal region. Horizontal arm 8 cm. x 4 cm. x brain deep vertical arm (extending towards left parietal region) 8 cm. x 4 cm. approx. x brain deep. Brain matter was coming out through the wound due to compound fracture of both parietal bones and right temporal bone.
>
> **3.** An incised wound 6 cm. x 2 cm. x brain deep vertically obliquely placed over right occipito-parietal region of the scalp. Fractured bone and lacerated brain matter was seen through the wound.
>
> **4.** An incised wound over post auricular right region 4 cm. x 1.5 cm. x bone deep vertically placed. Fractured right temporal bone was felt through the wound.

The autopsy surgeon gave his report Ex.P.45 and opined that the deceased died due to shock resulting from hemorrhage

caused by extensive head injury and the death was homicidal in nature. Thereafter, various articles, including the weapons of offence, were seized and after recording the statements of witnesses and completion of the usual investigation, a charge sheet u/ss 148, 302 & 120-B of I.P.C. was filed against the accused persons in the Court of J.M.F.C., Janjgir vide Criminal Case No.1062/1995, who in turn committed the matter to the Court of Sessions from where it was received on transfer by the Addl. Sessions Judge, Janjgir, who conducted the trial and passed the impugned judgment on 12.7.2001, whereby the said Court convicted the appellants as aforementioned and acquitted 10 co-accused persons. It is against this judgment of conviction and order of sentence, passed by the said Court, above 12 appeals have been filed.

(6) The conviction of the appellants are based upon testimonies of six witnesses, who were cited as eye witnesses in the matter, namely Madhubala @ Baby (P.W.10), Karia Sabariya (P.W.14), Jamwanti Bai (P.W.8), Vijay Singh (P.W.9) Kashvira Bai (P.W.12) and Saraswati Bai (P.W.16). In appreciation, the learned Sessions Court found that there was no involvement of those 10 co-accused persons who have been acquitted in this case. However, according to the said Court, the involvement of the appellants in commission of the crime was held to be proved and they all were convicted u/ss 148 & 302/149 I.P.C. and sentenced to undergo imprisonment for whole of their remaining life and to pay fine of Rs.200/-.

(7) Learned counsel for the appellants raised almost similar contentions. Their first contention was that except P.W.14, Karia Sabariya, all other witnesses are relative witnesses, therefore, they shall be characterized as the interested witnesses and their testimonies should not be believed. P.W.14 Karia Sabariya is also an unreliable witness, as he has departed/deviated from his previous statement on

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many points. In general, they argued that nearly all the witnesses are unreliable because they have very much deviated from their previous statements, particularly, in mentioning the names of assailants. They also argued that omnibus statements regarding assaults by the other accused persons than the specifically named ones, by these witnesses, cannot be accepted as it would not be held that all of them have shared the common object of the specifically named assailants who are attributed specific overt act and the conviction of other accused persons with the aid of section 149 would not be possible. They also argued that since the versions of the eye witnesses are not fully corroborated by the medical testimony, therefore, on this count also they be disbelieved.

(8) Per contra, learned counsel for the State argued that some of the assailants were specifically mentioned by the eye witnesses and the evidence of these witnesses would show that others have shared common object of the actual assailants and the Sessions Court has rightly convicted all of them on appreciation with the aid of section 149 of I.P.C.

(9) So far as the question of relative witnesses are concerned, it has been held by the Apex Court in the matter of ***Rizan and another -Vs- State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, AIR 2003 S.C. 976***, in para 6, that the relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

(10) Relying upon the decision of the Apex Court in ***State of U.P. -Vs- Paras Nath Singh and others AIR 1973 S.C. Pg.1073,*** the Division Bench of the Kerala High Court also held

in the matter of ***Sahadevan Rajan and others -Vs- State of Kerala, 1992 CRI.L.J. 2049*** that the straightforward and trustworthy evidence of relations of the deceased need not corroboration for sustaining the conviction. Such evidence cannot be discarded on the sole ground of interestedness in the prosecution case.

(11) In ***Namdeo -Vs- State of Maharashtra, 2007 AIR SCW 1835***, the Apex Court held that a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive. The Apex Court also observed that a close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one. The Apex Court also referred to the decision rendered in the matter of ***Harbans Kaur and another -Vs- State of Haryana, 2005 AIR SCW 2074***, in which, it was held that there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. The Apex Court further ruled that the testimony of the solitary witness can be basis for conviction. Neither the legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and

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quality of evidence rather that on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye-witness, therefore, has no force and must be negatived.

(12) About discrepancy in medical evidence and eye witness account, it has been held by the Supreme Court in the matter of ***State of U.P. –vs- Krishna Gopal and another, (1988) 4 SCC 302*** and further in ***Ramakant Rai –vs- Madan Rai and others AIR 2004 S.C. 77*** that "where the eye-witnesses" account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Importance and primacy should be given to the orality of the trial process. Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scale for a cumulative evaluation."

(13) Therefore, it is clear that the eye witness testimony may contain inaccuracies and exaggerations; there may be errors or omissions on account of lapse of memory or poor power of observations or inability to recount and recite accurately. Sometimes, doctors also may not bestow sufficient care while performing examination or preparing records and their opinion

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may be based on inadequate or incomplete or defective examination or lack of complete knowledge. It is indeed not fair to expect a total correspondence between these two items of evidence. Court must carefully examine the discrepancies and, if it is reasonably possible, to arrive at the substantial and true version. Court should not throw out the prosecution case on the basis of such discrepancies. Accuracy of medical witnesses and ocular witnesses depends upon several factors. Inconsistency is not sufficient to discredit an eye witness. Sometimes an eye witness may allege a blow or stab etc., but there may not be corresponding injuries. The possibility of weapon not actually striking and not causing injury cannot be ruled out. Eye witness may err in details like direction or the blow etc. Inconsistency regarding such details between the two items of evidence may not be important. There may be discrepancies regarding the weapon or manner of attack. If the eye witness testimony is clear and convincing, discrepancies cannot matter. Doctor is a witness of both fact and opinion. Medical evidence acts as a check upon testimony of eye witness; it is also independent evidence in so far as it establishes facts e.g., tattooing marks, nature and dimensions of injury etc. Medical evidence is also corroborative of eye witness testimony, in as much as it may show that the injury might have been caused in the manner alleged. Defence could use the medical evidence to show that the injury could not have been caused as alleged and thereby discredit eye witness testimony. However, unless the medical evidence goes so far that it completely rules out all possibility whatsoever of the injuries taking place in the manner alleged by the eye witness, the prosecution version cannot be thrown out on the ground of alleged inconsistency between the two items of evidence. Court has to remember that medical evidence is mainly opinion evidence on which the court could form its own independent conclusion. In case of divergence, the Court must try to reconcile the two; if that is not possible the court has to appreciate the evidence like any other evidence,

having regard to reasons and data provided by the Doctor and the cogency or otherwise of eye witness testimony. If eye witnesses are credible and trustworthy, medical opinion suggesting alternative possibility may not be accepted as conclusive. Primacy should be given to oral evidence. ***(Please also see 2007 CRI.L.J. 1036 - Atami Laxman V. State of Chhattisgarh)***

(14) About the aid of section 149, in the matter of ***Basisth Roy and others –vs- State of Bihar, AIR 2003 S.C. 1439***, the Apex Court held that when omnibus statement in the complaint that all other accused also attacked with lathis are not supported by medical evidence or by witnesses, other accused cannot be held to have shared common object of the two accused as in that case who are attributed specific overt act, saying this the Apex Court held that the conviction of other accused persons u/s 300 with the aid of section 149 is based on no material and the same was liable to be set aside.

(15) Therefore, it is clear that the omnibus statement about other accused persons than the main assailants regarding participation in the crime which may not constitute an element of common object cannot make them responsible for conviction u/s 302 with the aid of section 149 I.P.C. and to this effect the scrutiny of the evidence has to be done to find out their participation with reference to the ingredients of section 149 or with reference to the share of the common object of the main assailants.

(16) On the above principles, if we examine the records, it would appear that Madhubala @ Baby (P.W.10), who is the niece of the deceased Ramanuj @ Vikki Singh,has deposed that on the fateful day i.e., 17.1.1995, at 11.00 - 11.30 a.m., she was present in her shop which is in the vicinity of the village. Karia Sabariya (P.W.14) came over to her and narrated that Vikki Singh is being assaulted near Navatalab. She deposed that

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Karia Sabariya told her the names of the assailants i.e., Nande, Kumar, Jaipal, Basant, Baran, Guha, Ramesh, Basant Das, Dhananjay, Rohit Karsh, Bhagwat Kurmi, Chhatram, Amritlal, Janak, Ram Khilawan, Nand Kumar, Santosh and Gopal Das. She has further added that Karia Sabariya had told her about the other accused persons also who are present in the Court. She deposed that on receiving such information, she went towards Navatalab and when she reached there, she saw that all the above persons were present there and many other persons in the form of a mob had also gathered there. This is what she says in para 1 and 2. However, in para 3 she deposes that as soon as she reached to the place of occurrence, she saw that all the accused persons including those, who are named by her, were assaulting her uncle. The accused persons were armed with Tabbal, Farsa, Rod, Swords and also the lathi on which an iron part was fixed. She further deposed that they were saying that they have killed Vikki and now they will kill Jawahar and his two sons in their fields and by saying these and using abusive language, they marched towards the fields of Jawahar Singh. She deposes vide Para 4 that she was praying to the accused persons to forgive the lives (perhaps the life of Jawahar Singh etc.,) but the accused persons did not give heed to her call and ultimately after marching to the field of Jawahar Singh, they assaulted her father (Jawahar Singh), brothers Bhupendra Singh and Shailendra Singh, who also lost their lives. This witness has been confronted by her police statement Ex.D-4. In her police statement she has mentioned the names of Nande, Kumar, Jaipal, Guha,Ramesh, Dhanjay, Rohit Karsh, Nand Kumar, Santosh (who are also named in the court statement) but had also deposed about 3 more persons namely Prahlad Singh, Rameshwar Singh and Rajkumar.

(17) If we closely scrutinize the testimony of this witness particularly with reference to the first information report and also with reference to the evidence of Karia Sabariya (P.W.14) &

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Jamwati (P.W.8), it would appear that she is making exaggerations. This is a case, in which, the F.I.R., was not lodged by an eye witness, but it was lodged by a person who was duly briefed by this witness Madhubala @ Baby (P.W.10). In the F.I.R., only following persons are named i.e., Kumar Singh, Nande Singh, Santosh Singh, Guharam Kashyap, Jaipal Kashyap, Raj Kumar Singh, Nand Kumar, Reshamlal, Prahlad Singh, Rameshwar Singh, Dhananjay Kashyap and Rohit Kumar Karsh. These are 12 in number. If the above 18 persons were seen by this witness or the names of 18 persons were narrated to her by Karia Sabariya, there was no reason with this witness not to tell about all of them to the maker of F.I.R., i.e., Vinay Kumar Singh and in that situation, Vinay Kumar Singh would have also mentioned their names in the F.I.R. Therefore, this omission on the part of this witness appears to be material and it cannot be said on her testimony that the 18 persons who are named by her in the deposition were present on the spot and the presence of other accused persons who are neither named in the F.I.R. nor in the police statement of this witness appears to be doubtful.

(18) P.W.8 Jamwati who also happens to be close relative of the deceased has deposed that when she heard hue and cry from the place of occurrence, she saw that accused Kumar Singh and Nande both were assaulting the deceased with Tabbal and Lathi which was fitted with an iron part and accused Guha, Basant, Jaipal, Thandu Das, Baran, Rameshwar Singh, Santosh and many other persons had surrounded him. One thing peculiar about this witness is that she has also named the similar persons in her 161 statement and so far as the names of the assailants are concerned, there is no omission on that part. Many questions have been put to this witness in her cross examination, but no material contradiction, so far as names of the assailants are concerned, could be brought in the evidence of this witness. However, her evidence is not fully corroborated

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by the F.I.R. as she has also named those 4 persons who are not named in the F.I.R. One thing which is undisputedly coming from the evidence of this witness, vide para 5, is that Karia Sabariya (P.W.14) was present on the spot and his life was also attempted by the assailants but he could run away from the place of occurrence. She has also established about the presence of Madhubla vide para 5 of her evidence.

(19) P.W.14 Karia Sabariya deposes that on the fateful day, he was coming alongwith the deceased Ramanuj @ Vikki on his Bicycle, he was a pillion rider and at about 11.30 a.m. as soon as they reached to Nawatalab, accused Nande, Guha, Rameshwar Singh, Lala, Rajkumar, Kumar Singh, Amrit, Baran and Chhatram, all of them assaulted Vikki by lathis and Tabbal and he any how ran away from the place of occurrence. He has further deposed that Nande Singh had tried to chase him, but he could not get him and ultimately he went to the house of Baby @ Madhubala (P.W.10). Baby is the daughter of Jawhar Singh. He deposes that he had told her that Vikki Singh has been killed near Navatalab, on which, she instructed him to go and tell the story to her aunt (wife of the deceased). Thereafter, he went to the wife of Vikki Singh and narrated the story to her, who instructed him to tell the matter to other persons also. He has deposed vide para 3 that when the said accused persons were beating the deceased, about 20-25 persons were also there, who were also in their group, but he does not know the names of those persons.

(20) P.W.9 Vijay Singh, deposed that on the fateful date at about 11-12 O' clock he had seen Karia Sabariya (P.W.14) and Ramanuj @ Vikki (deceased) going on a Bicycle. They were going towards their house. When they reached in front of house of Raj Kumar Singh, accused Nande Singh stopped Ramanuj Singh and Ramanuj Singh was assaulted by Nande, Nand Kumar, Santosh Singh, Rameshwar Singh, Kumar Singh, Raj Kumar Singh, Jaipal, Resham, Rohit Karsh, Guha, Janak, Basant Das,

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Gopal Das, Amrit, Dhananjay, Thandu Das, Sanat Sahu, Akti and Visheshar who were armed with lathi, Farsa, Rod etc. He deposes that many other persons were also there alongwith the assailants, but he is not telling the names of those persons on account of fear. He also deposes that he is not able to tell the names of more persons till then, unless security arrangements are made for him. In his 161 statement Ex.D-3, this witness has stated about 23 persons to be the assailants in the matter. He has admitted that the deceased Vikki Singh and Jawahar Singh both were real brothers and they happen to be his uncles according to the family relations. Some omissions have been brought in the evidence of this witness which are in relation to doubting of his presence on the scene of occurrence. However, this witness has also established the presence of Karia Sabariya on the place of occurrence as according to para 1 of his examination in chief, the deceased and Kariya Sabariya (P.W.14) both were going on a Bicycle towards their house.

(21) P.W.12 Kashwira Bai deposes that at about 11-11.30 a.m. on the fateful day, when she was in her house, she heard the noise of quarrel, on which, she came out from the house where she met Kariya Sabariya who told her that Nande, Kumar, Guha, Rameshwar, Jaipal, were assaulting the deceased Ramanuj. Immediately later on she says that Kariya Sabariya had not told the names of assailants to her. In para 10, she deposes that after hearing this, she rushed towards Navatalab and after reaching there, she could see that her husband Ramanuj Singh was being assaulted by Nande, Kumar, Jaipal, Guha, Amrit, Dhananjay, Rameshwar, Santosh, Nand Kumar, Nirmal, Basant, Devilal, Balchand, Melabai and Amrit. She also pointed towards Dhananjay and said that he was also assaulting. It has been argued about this witness that she is contradicting on many points from her police statement Ex.D-5 and further that in view of the evidence of P.W.14 Karia Sabariya vide Paras 8 & 9, she does not appear to be an eye-witness as

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she could reach to the spot only after the assault (*Marpit*) was over.

(22) P.W.16 Sarashwati Bai who is wife of late Jawahar Singh, deceased in other Crime, has deposed that on the fateful day at about 11 O' clock after hearing hue and cry, she came out from her house and rushed towards Navatalab where many persons about 20-25 had gathered there. Among those persons, Nande, Kumar, Rajkumar, Baran, Basant, Resham, Guha, Jaipal, Amrit, Rameshwar, Santosh, Devilal, Balchand, Nirmal, Surjan, Krishna Kumar, Santosh Kumar, Dhananjay, Rohit Karsh and many other persons were there. They were assaulting her brother in law (deceased Vikki Singh) with lathis, tabbal, Farsa, rod etc., on account of which, he died. After causing death of deceased Vikki Singh, they were taking the name of her husband and were saying that "let us go and kill him and also kill his sons namely Shailendra and Bhupendra". She also went behind them with folding hands making prayer. At that time, Madhubala, her daughter (P.W.10) also reached there. She had also prayed to them saying that "forgive them this time". The same argument has been advanced for this witness saying that she is totally unreliable in view of the evidence contained in Paras 8 & 9 of Karia Sabariya (P.W.14).

(23) P.W.4 Vinay Singh, who is the son of the deceased, is the next important witness who has lodged the F.I.R. He deposes vide para 2 that about 10 a.m. on the fateful day, her aunt Sarashwati and counsin Madhubala came over to him. They were weeping. On this, he asked to them, on which, Madhubala stated that Babuji (Ramanuj @ Vikki) has been murder near Navatalab. She has stated the names of Kumar Singh, Amrit, Reshamlal, Jaipal, Dhananjay, Basant Kumar and 8 – 10 more persons as the assailants of his father. He further deposes that thereafter, he went towards Navatalab and saw that his father was murdered and as soon as he reached to the spot, within one minute thereafter, his sister Sukruti Bai told her that the

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assailants are going towards the fields where Jawahar Singh and her brothers are working. She requested that he should go to them and tell them about all this. In Para 4, he deposes that before he could reach to his uncle, for telling all this, these persons had already reached there and they were assaulting his uncle, which in fact, became the second incident after this first one.

(24) These are the main sets of evidence, on which, on appreciation, the learned Sessions Court held the appellants guilty under the aforesaid offence and has acquitted the other 10 co-accused persons.

(25) If we analyze the evidence of all these witnesses, on the principles referred to above, it would appear that P.W.10 Madhubala @ Baby is not an eye witness as she has reached to the spot after getting the information from P.W.14 Karia Sabariya. According to the prosecution itself, the place of occurrence i.e., Navatalab is at some distance from the shop of this witness and the story comes that after witnessing the assault of the deceased by the accused persons, Karia Sabariya had left the place of occurrence and thereafter, he reached to the house of this witness. According to Karia Sabariya, the assault was over before him and thereafter only, he has left the place of occurrence. Naturally he must have consumed time to reach to the house of this witness and telling her the names of assailants, where after, she has gone to Vinay Kumar and has narrated the story to him alongwith the names of the assailants and then she had gone to the spot. Therefore, it does not appear to be possible that she herself had witnessed the occurrence, hence she cannot be held to be the eye witness of this case.

(26) So far as evidence of P.W.12 Kashwira Bai is concerned, she had also reached to the spot at a later stage. Kashwira Bai (P.W.12) states, from the very beginning, that she came out from her house after hearing the noise of quarrel, she firstly met Karia Sabariya, who told her that the deceased is being

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assaulted by the accused persons. Admittedly, Karia Sabariya had visited her place after firstly visiting the house of Madhubala, therefore, he would have taken more time to reach to the house of this witness than the time consumed for reaching to the house of Madhubala, and certainly, by that time, the quarrel was over. Therefore, the claim of this witness Kashwirabai (P.W.12) that she had seen the occurrence does not appear to be true and correct.

(27) So far as P.W.9 Vijay Singh is concerned, his conduct in the court makes him unreliable. He has claimed that he had seen the deceased Ramanuj @ Vikki Singh and Karia Sabariya going on the Bicycle of Ramanuj @ Vikki Singh and thereafter he had also seen the assault. He has named many persons in his evidence and has stated that if necessary security arrangements are made, he will disclose the names of some more persons. Undisputedly, he is admitting the presence of Karia Sabariya (P.W.14) on the place of occurence and when Karia himself is not telling about the assault being made by so many persons, who are named by this witness, this contradiction appears to be vital so far as his testimony is concerned and his version regarding complicity of many accused persons, as deposed by him, appears to be unreliable.

(28) P.W.8 Jamwati, who is also one of the close relative of the deceased, has claimed that she had seen the occurrence. Finally she stated the names of various assailants. However, in the first instance she says that accused Kumar Singh and Nande both were assaulting the deceased with Tabbal and Lathi which was fitted with an iron part and accused Guha, Basant, Jaipal, Thandu Das, Baran, Rameshwar Singh, Santosh and many other persons had surrounded him. She does not say that she had seen the occurrence after going to the place of occurrence. She has stated that when she came out from her house she could witness all this. Admittedly her house is situated at some distance from the place of occurrence.

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According to her, a mob had gathered there. Therefore, she would not be in a position to identify from a long distance as to who were assaulting, who were surrounding and who were the mute spectators of the incident and in this manner, her evidence cannot be relied on to base the conviction either under the substantive offence or with the aid of section 149 of I.P.C.

(29) So far as Sarashwati (P.W.16) is concerned, she claims to go to the spot after hearing hue and cry and had see that the accused persons were assaulting the deceased. She is wife of Jawahar Singh, brother of deceased Vikki Singh, who also died in the second incident. She is not telling the presence of Karia Sabariya on the spot, whereas his presence has been recognized by many witnesses and Karia Sabariya (P.W.14) himself has stated that he was also chased by one of the assailants and he could any how run away from the spot saving his life. Thereafter he reached to the house of Madhubala (P.W.10). If P.W.16 is stating the truth that she has reached to the place of occurrence and had seen the actual assault, she could not have skipped this part of the story which shows that Kariya Sabariya was accompanying the deceased and his life was also attempted by the assailants and one of the assailants had chased him while he was running away from the place of occurrence.

(30) Therefore, in view of the above discussion, the evidence of P.W.10 Madhubala, P.W.8 Jamwati, P.W.9 Vijay Singh, P.W.10 Kashwira Bai and P.W.16 Sarashwati Bai, do not inspire confidence of this court to hold that in fact they had witnessed the occurrence as they are claiming before the Court. It appears that after disclosing the story by Karia Sabariya to Madhubala and other family members of the deceased, they had reached to the spot at a later stage and atleast they had not personally witnessed the first incident relating to the murder of deceased Ramanuj @ Vikki.

(31) So far as P.W.14 Karia Sabariya is concerned, his evidence is clear and unambiguous as he says that on the fateful day, he

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was accompanying the deceased on his Bicycle and when they reached near Nawatalab, the deceased Ramanuj @ Vikki was assaulted by accused Nande, Guha, Rameshwar Singh, Lala, Raj Kumar, Kumar Singh, Amrit, Baran and Chhatram. He has specifically stated that these persons had assaulted the deceased with Lathi and Tabbal. After the assault was over, he, out of fear, left Vikki Singh there and ran away from the place of occurrence and at that time, he was chased by Nande Singh. However, any how, he could reach the house of Madhubala (P.W.10) and narrated the story to her alongwith the names of the assailants. The presence of this witness is also admitted by other witnesses and he is the only independent witness in this case meaning thereby he is neither related to the deceased nor such an evidence is brought which may show that he was in inimical relations with the accused persons particularly with those accused persons whose name he is taking in his evidence. The version of this witness inspires confidence of this Court. There appears to be no possibility of false implication by this witness. If we test the evidence of this witness, in light of other witnesses, his evidence appears to be cogent and natural. There may be some mistake in statement of facts by him to the other witnesses, in which, he may leave the names or may commit a mistake in telling the names of persons, but his version in the examination before the Sessions Court is intact so far as participation of the following persons i.e., Nande, Guha, Rameshwar Singh, Lala, Raj Kumar, Kumar Singh, Amrit, Baran and Chhatram are concerned. Accused Nand Kumar is also called as Lala, which was made clear while hearing the common arguments in all above appeals along with the connected appeals. Relying on the testimony of this witnesses, it is proved on record that these persons had participated in commission of the murder of the deceased and they all had shared a common object to commit his murder and ultimately the deceased was assaulted by them and I hold it accordingly.

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(32) Therefore, the appeals filed on behalf of Kumar Singh, Nande Singh, Rameshwar, Nand Kumar, Baran, Chhatram, Raj Kumar, Guharam and Amritlal, are dismissed. The conviction and sentence awarded by the Sessions Court to the above 9 appellants u/ss 148 & 302/149 I.P.C. are hereby confirmed and respective criminal appeals filed on their behalf are dismissed. Rameshwar has died during the pendency of his appeal, therefore, his appeal is dismissed as abated.

(33) So far as other 12 accused/appellants namely Surjan Ram, Balchand, Devilal, Janak, Bhagwat, Santosh Singh, Rohit Singh, Nirmal Kashyap, Jaipal Kurmi, Reshamlal Kurmi, Dhananjay and Basant are concerned, their appeals are allowed. Their conviction and sentence awarded by the Sessions Court are hereby set aside. They are acquitted of the charges framed against them.

(34) In the result, Criminal Appeal Nos.646/2001, 650/2001, 715/2001, 822/2001, 824/2001 and 924/2001 are allowed in full.

(35) Criminal Appeal No.786/2001 and 873/2001 are allowed in part.

(36) Criminal Appeal Nos.761/2001, 842/2001, 851/2001 and 868/2001 are dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Rao/